

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

1 NESTOR FERNANDO and RUBILYN  
2 FERNANDO, individuals, on behalf of  
3 themselves and others similarly situated,

4 Plaintiffs,

5 v.

6 PEOPLE'S CHOICE HOME LOAN, as the  
7 Original Lender, et al.,

8 Defendants.

9 Case No. 2:12-cv-00706-MMD-RJJ

10 ORDER

11 (Def.'s Motion to Dismiss – dtk. no.11)

12 **I. SUMMARY**

13 Before the Court is Defendant Land Title of Nevada, Inc.'s ("Land Title") Motion to  
14 Dismiss Plaintiffs Nestor and Rubilyn Fernando's ("Plaintiffs") Complaint. (Dkt. no. 11.)  
15 Plaintiffs have failed to file an opposition. For the reasons discussed below, the  
16 Defendant's Motion is granted.

17 **II. BACKGROUND**

18 This case arises out of the alleged wrongful foreclosure of residential real  
19 property. On or about June 19, 2006, Plaintiffs entered into a loan agreement with  
20 People's Choice Home Loan to purchase the residential real property at 2324 Scissortail  
21 Court, North Las Vegas, Nevada 89084 ("Property"). (Dkt. no. 1 Ex. A-1). The loan  
22 agreement was memorialized by a promissory note for \$364,000.00. (*Id.*) The  
23

1 promissory note was secured by a Deed of Trust against the Property. (*Id.*) Land Title  
 2 recorded the Deed of Trust on June 23, 2006. (*Id.*)

3 Plaintiffs' sole reference to Land Title arises in the Complaint's identification of  
 4 parties. (Dkt. no. 1 at ¶ 10). The sum of Plaintiffs' allegations against Land Title consists  
 5 of Land Title's role, as the title company, in overseeing and Land Title's alleged  
 6 participation in fraud on the Plaintiff in the origination of the note." Plaintiffs make  
 7 reference to some "imperfect securitization of the Note," however, as the sentence does  
 8 not contain a verb, the Court cannot determine what exactly Land Title did or did not do.

9 Plaintiffs allege the following claims against all defendants: (1) lack of standing to  
 10 foreclose, (2) fraud in the concealment, (3) fraud in the inducement, (4) intentional  
 11 infliction of emotional distress, (5) slander of title, (6) declaratory relief, (7) violations of  
 12 Nevada Civil Code, (8) unfair trade practices, and (9) civil RICO. Land Title seeks to  
 13 dismiss all claims under Fed. R. Civ. P. 12(b)(6).

14 **III. DISCUSSION**

15 **A. Legal Standard**

16 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which  
 17 relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide  
 18 "a short and plain statement of the claim showing that the pleader is entitled to relief."  
 19 Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While  
 20 Rule 8 does not require detailed factual allegations, it demands "more than labels and  
 21 conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).  
 22 "Factual allegations must be enough to rise above the speculative level." *Twombly*, 550  
 23 U.S. at 555. Legal conclusions couched as factual assertions are not entitled to the  
 24 assumption of truth. *Iqbal*, 556 U.S. at 678. Thus, to survive a motion to dismiss, a  
 25 complaint must contain sufficient factual matter to "state a claim to relief that is plausible  
 26 on its face." *Id.* (internal citation omitted).

27 **///**  
 28

1           **B. Analysis**

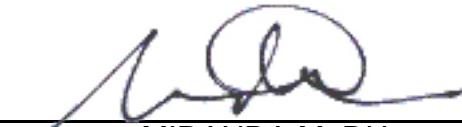
2           First and foremost, Plaintiffs have failed to respond to Land Title's Motion to  
3 Dismiss. Failure to file points and authorities in opposition to a motion constitutes  
4 consent that the motion be granted. L.R. 7-2(d); see *Abbott v. United Venture Capital,*  
5 *Inc.*, 718 F. Supp. 828, 831 (D. Nev. 1989). Here, despite having been informed of the  
6 September 10, 2012, deadline for filing an opposition, Plaintiffs have failed to respond.  
7 Thus, Plaintiffs are deemed to have consented to the granting of Land Title's Motion.

8           Moreover, based on the Court's review of the allegations in the Complaint against  
9 Land Title, the Complaint fails to state a claim against Land Title. Plaintiffs offer no  
10 supporting facts to suggest how overseeing the recording and processing of the Deed of  
11 Trust and Promissory Note makes Land Title liable under any legal theory. Further,  
12 Plaintiffs' bare allegations that Land Title was a "participant in fraud on the Plaintiff in the  
13 origination of the note" amount to nothing more than legal conclusions, which are not  
14 afforded the assumption of truth. Finally, because Plaintiffs' reference to some  
15 "imperfect securitization of the Note" is unsupported by a verb that would show how  
16 Land Title was responsible for the act, this allegation is indecipherable and insufficient to  
17 state a claim. Thus, Plaintiffs have failed to state a claim upon which relief can be  
18 granted and the claims as to Land Title are dismissed.

19           **III. CONCLUSION**

20           IT IS THEREFORE ORDERED that Defendant Land Title of Nevada, Inc.'s  
21 Motion to Dismiss (dkt. no. 11) is GRANTED.

22           DATED THIS 11<sup>th</sup> day of October, 2012.

23             
24           \_\_\_\_\_  
25           MIRANDA M. DU  
26           UNITED STATES DISTRICT JUDGE  
27  
28